HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 262 of 2004 (M/S)

Sri Vikram Luthra
Vs..
Civil Judge Junior (SD), Dehradun
and another.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 20.4.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 262 of 2004 (MS)

Sri Vikram Luthra ….. Petitioner

Versus

Civil Judge (SD), Dehradun & another …… Respondents

Sri Sharad Sharma, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 20.4.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ in the nature of certiorari quashing the order dated 24.3.2004 passed by the respondent no.1.

Briefly stated the facts giving rise to the present writ petition are that the petitioner has field a suit on 24.9.2003 for permanent injunction restraining the respondent no.2 from demolishing the property in dispute. The petitioner has stated that the property in dispute was initially beonged to one Smt. Shashi which was purchased by Mr. Chandra Prakash by a registered sale deed on 8.12.1977. Sri Chandra Prakash constructed a shop and godown

having tinned roof at the height of 20 feet and from the construction in question he has been running his business. After the death of Chandra Prakash the property was purchased by the petitioner from the son of Sri Chandra Prakash on 22.5.2003 and since then the petitioner is in exclusive possession over the property in question. The petitioner has stated that during the pendency of the suit he moved an application on 27.1.2004 praying that the entire record of case No. 1108/S-6/03 may be summoned from the M.D.D.A. The application has been field under Order 13 Rule 10 C.P.C. on the ground that the office of the respondent no.2 has refused to issue the copy of the orders passed in those proceedings. The said application was rejected by the impugned order dated 24.3.2004.

Order 13 rule 10 C.P.C. reads as under:

Court may send for papers from its own records or from other Courts: ***(1)*** *The court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Courts, the record of any other suit or proceeding, and inspect the same.*

(2)Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense

obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or tat the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

The learned Civil Judge has rejected the application of the petitioner. In my opinion there is no cause of action accrued to the petitioner to file the present writ petition in as much as the learned Civil Judge has rejected the application only on the ground that the petitioner has not established as to which of the document is required. The observations, of the Civil Judge to that effect are quoted below:

प्रार्थनापत्र 21 ग निरस्त किया जाता है। प्त्रावली निस्तारण प्रार्थनापत्र 6ग दिनांक 20.4.2004 को पेष हो। प्रतिउत्तर प्रार्थनापत्र के निस्तारण की तिथि से पूर्व दा,खिल किया जा सकता है। नियत तिथि तक अस्थाई निषेधाज्ञा आदेष प्रभावी रहेगा।

Sri Sudhansu Dhulia, Advocate appearing on behalf of the respondent no.2 has very fairly stated that the petitioner may apply for the certified copies of the documents on payment of requisite fee and expenses and the same shall be made available to him. Thus the petitioner is at liberty to apply for the copy of respondent no.2 shall provide the same within a period of one week after the receipt of the application.

Subject to the aforesaid observations the writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

20.04.2004
Dhyani